IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5951 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

JADIBEN W/O SHANKARLAL PARMAR

Versus

STATE OF GUJARAT

Appearance:

MR SA BAQUI for Petitioners

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 20/10/97

ORAL JUDGEMENT

Two applicants have preferred this application for bail as applicants came to be arrested by the Police Investigating CR no.I 226/97 registered at Sherkotda Police Station on the allegation of sprinkling kerosene on the person of the deceased and causing serious burns by throwing at her lighted matchstick.

The deceased soon after sustaining injuries was taken to the Civil Hospital where her complaint came to be recorded. After investigation being completed Police has filed chargesheet, however, the learned Advocate had thought it fit not to place the chargesheet before the Court. The complaint disclosed allegations as under:

Deceased Hiraben was residing with her husband, her mother-in-law-Jediben applicant no.1, Asha her sister-in-law applicant no.2, her father in law, her two brothers in law Bharatbhai and Manoj. It is averred by her in the complaint that her mother-in-law and sister-in-law tortured her and her husband being afraid of her mother-in-law was not able to say anything to them though she conveyed about the same. Prior to three days of the incident, applicants' quarrelled with her. On the date of incident at about 9.00 p.m. deceased, the complainant was with her mother-in-law and sister-in-law. At that time her father-in-law and husband were out of home. It is at this time the applicants picked up a quarrel and mother-in-law poured kerosene on the person of the complainant while her sister-in-law applicant no.2 giving abuses threw a lighted matchstick on her as a result of which she was surrounded by flames. These applicants thereafter left the house. The complainant sustained burn injuries and on raising shouts by her persons collected and she was taken for treatment to the Civil Hospital by one Mukesh, where her complaint came to be recorded. She has clearly stated that her mother-in-law and sister-in-law caused burn injuries to her. Complainant died during the treatment and the offence came to be registered punishable under Sec.302 of the Indian Penal Code.

In the instant case, it is very unfortunate that a woman is alleged to have been murdered by two women and that too buy close relatives, namely, mother-in-law and sister-in-law. It is a sorry state of affairs that even today the mother-in-law or the sister-in-law in the family dictates particularly the daughter-in-law and tries to rule as per their whims and the daughter-in-law in the house is treated as a chattel. Unfortunately women in our country belongs to a class or a group of society who are in disadvantageous position on account of Civil and social barriers and impediments and therefore have been victim of tyranny at the hands of men or in-laws. When a woman commits crime against a woman and that too who is a family member it speaks a lot about the act of a woman committing a crime Mother-in-law should not forget that she was a daughter-in-law or that she happens to be a sister-in-law or she may be a

sister-in-law. Therefore unless and until the daughter-in-law who is a newcomer in the family is not welcomed as a daughter as stated in shastras then, marriage is only formality. From the complaint, it appears that even husband was not in a position to address his own mother in the affairs of the house. That indicates a powerful mother-in-law of the deceased and a powerful is the sister-in-law of the deceased.

Mr. Baqui, learned Advocate submitted that this Court has held in a reported decision that when a woman is an accused person, she should be released on bail. The decision in case of ILABEN WD/O DIPAKKUMAR DHANRAJ SHAH V. STATE OF GUJARAT reported in 1993(2) G.L.R p.1148 has been cited. Section 437 of the Criminal Procedure Code has been considered by the Court. The proviso to Section 437(1) reads:

" Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm."

In the case of Ilaben(Supra), the facts are referred in paragraph 4 of the decision. In that case deceased and her husband were residing in one apartment and were running a shop in the name of" Desh Pardesh" carrying on business in notified customs goods in their shop . A servant named Kanubhai was employed who was looking after the kitchen and other household work. Out of the wedlock Ilaben delivered three children. Between the night of 1st July, 1992 and 2nd July, 1992, the incident in question took place. As alleged by the prosecution, wife of the deceased in conspiracy with aforesaid cook Kanu and two others committed murder of deceased Dipakkumar, placed his dead body in a wooden box and managed to see that the wooden box was taken out of the apartment in a Maruti Van to a place near village Antroli and to see that the same is set to fire. The learned Judge found that there was a prima facie case against the petitioner-accused. Before the Court in that case there was no direct evidence to involve the accused and there was no evidence of her illict tow with Kanu, the cook and woman accused was 36 years of age having three children of tender age. It appears that in the facts of that case, the Court enlarged the accused on bail in the sum of Rs.10000/- with solvent surety for the like amount on certain conditions. In the instant case, there is strong piece of evidence against the accused.It is pointed out from the memo of application that both the petitioners are ladies, the applicant no.1-the mother-in

law being of 50 years of age who has to look after the whole family and the petitioner no.2-the daughter of applicant no.1 is of tender age of 18 years only and they are not likely to abscond. It is submitted before the Court that even if the Court comes to the prima facie conclusion that the accused are involved in the crime in question, but as the accused persons are women, they should be enlarged on bail. This is in short the submission. In the case of Ilaben (supra), a woman was required to look after three children and father aged 72 years and considering that aspect the Court exercised the discretion in favour of the accused. In the instant case, it is not the case that either applicant no.1 or applicant no.2 is in need of feeding any child or it is not the case that any of the applicant is required to maintain small children in the family. Therefore, the judgment which is cited is of no assistance to the learned Advocate. Mr. Baqui interfering while dictating the judgment stated that paragraph 10 of the judgment should be considered. It is surprising that learned Advocate is not aware about the facts of that case which has been considered by the learned Judge. Learned Advocate stated that in Criminal Appeal no.779/1982 the Court has observed as under:

" Mr. Vyas, however, urged that she has got a young daughter of about 9 years and Mr. Vyas urged that there is not a single case in which the lady accused even after conviction has not been released on bail pending hearing of the appeal. We asked Mr. Divetia, the learned Public Prosecutor to ransack the record of decided cases and he has not been able to point out any single case wherein lady accused after conviction has not been released on bail pending hearing of this appeal."

It is required to be noted that there was specific reference to look after young daughter aged 9 years by the lady accused and two submissions were made by the learned Counsel which are referred to in the judgment. It does not mean that whatever is stated by the learned Counsel is a fact situation. If there is incapability on the part of the Counsel, it cannot be taken to be granted that the High Court has released woman accused in all the cases irrespective of the nature of evidence and the crime alleged to have been committed. It is not the case that the Counsel has searched the entire record and has made statement thereafter. When the learned Advocate insists for a judgment, he ought to have gone through the judgment and thereafter ought to have referred. Suffice it to say that in that case minor girl aged 9 years was required to be looked after by the

mother, and therefore, it appears that she was released on bail by the Court.

Mr.Baqui has referred to a decision reported in AIR 1957 Rajasthan 10 wherein scope of Section 498 has been considered. However, the Court has observed:

" Having regard to the extraordinary manner in which the offence is alleged to have been committed and the other circumstances of the case, it appears not unreasonable to allow this petition and to accept heavy bail of the petitioner in order to safeguard her appearance at the trial."

There also it was pointed out that her young son was required to be looked after by her.

Learned Advocate has drawn the attention of the Court to a decision of Calcutta High Court in the case of NIRMAL KUMAR BANERJEE VS. THE STATE reported in 1972 CR.L.J. 1582. In that case, the question was raised before the Court that provision relating to grant of bail for non bailable offence under Section 497(1) of Criminal Procedure Code (1898) is arbitrary and unconstitutional being violative of Art.14 of the Constitution. Article 14 is a general provision and has to be read subject to the other provisions within the Part on Fundamental Rights such as Article 15(3) under which the State is empowered to make special provision for women and children. The Court has referred the facts of the case and in the facts and circumstances of the case released the male accused on bail. However, reasons are not recorded for exercising the discretion in favour of the accused released on bail. From the facts narrated and submissions made before the Court as referred in para 3,4 and 5 of the judgment, it is clear that Pradip and Biswadeb left for Nabargam on 30th May, 1971 and did not return and on inquiry it was learnt that Berlan Chakrborty brought some nine young men to his house. Nine dead bodies were discovered on 31st May, 1971. Police arrested number of persons and produced twenty of them before the Magistrate on 3rd June, 1971. Nirmal was produced on 5th August, 1971 who applied for bail and being unsuccessful before the Court of Magistrate and the Court of Sessions, approached the High Court. The said accused was on duty in Telephone Exchange in May and from June to 3rd August, 1971. In para 5 there is a reference to chargesheet and commitment of 22 persons chargesheeted for offences punishable u/ss. 302/ 120B/148/149/364 of Indian Penal Code. Learned Advocate could not point out from the text of the judgment as to what part was played

by said Nirmala in committing the alleged crime.

In that case the Court has considered the submission made by the accused that the provision is made in favour of women and children and that such provision is violative of Article 14 of the Constitution of India. The Court held that "The differentia between the two groups has thus a reasonable relation to the object of the legislature in the matter of grant of bail. The provision of Section 437(1) therefore in favour of one group of persons accused of non-bailable offence cannot be said to be arbitrary. The provision, therefore, is not ultra vires the Constitution." Proviso (1) to Sec.497 of Cr. P.C.(1898) has been considered and has been referred in the judgment and the learned Advocate by referring the decision submitted that in each case if the accused is below 16 years of age or sick or infirm should be released on bail. The Court has not stated so, and therefore this judgment is, in my view, not relevant to the facts of this case.

Mr.Baqui learned Advocate submitted that one Mukesh has removed the injured (now deceased) to the hospital and that Mukesh and others have filed affidavits not supporting the prosecution version. In the charge-sheet name of said Mukesh is not cited as a prosecution witness. It would be premature at this stage to say whether the prosecution witnesses are tampered with or not. Suffice it to say that the affidavits are obtained by the accused from the persons whose statements have been recorded by the police even though the accused are in custody. If applicants are enlarged on bail it would be much more dangerous as though they are in custody they have secured the affidavits of the persons whose statements have been recorded by the police.

In view of what is stated hereinabove, this application is required to be rejected.

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